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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91124984
Party	Defendant ROBIN RESEARCH LABORATORIES, INC. ,
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Submission	Applicant's Memorandum of Law In Opposition to Opposer's Motion for Reconsideration of Final Decision
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Date	05/17/2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GILETTE CANADA COMPANY d/b/a ORAL-B LABORATORIES,	)	
Opposer,	)	
v.	)	**Opposition No. 91124984**
ROBIN RESEARCH LABORATORIES, INC.,	)	
Applicant.	)	

Serial Number: **75/662,006**
Application Filed: **March 17, 1999**
Trademark: **ORALMAX AND DESIGN**
Published: **August 28, 2001**

APPLICANT'S MEMORANDUM OF LAW IN OPPOSITION TO OPPOSER'S MOTION FOR RECONSIDERATION OF FINAL DECISION

Applicant, Robin Research Laboratories, Inc., ("Applicant") hereby files, through its undersigned counsel, this Memorandum of Law in Opposition to Opposer's Motion for Reconsideration of Final Decision, and in support thereof, states as follows:

BACKGROUND

The Applicant has applied to register the mark ORALMAX on the Principal Register. The Opposer filed a Notice of Opposition to prevent issuance. Following briefing, on April 12, 2005, the Trademark Trial and Appeal Board dismissed the opposition filed by Opposer. Despite lacking sufficient grounds Opposer now seeks a Reconsideration of the Board's Final Decision. Applicant opposes the Motion for Reconsideration.

ARGUMENT

Opposer raises two (2) issues in requesting the Board to reconsider its decision. Each argument is flawed. First, Opposer inaccurately asserts that the Board should consider registrations filed with its Notice of Reliance because the Notice of Reliance should be deemed timely, when it was lack of proof and procedure, not timeliness, that prevented the registrations appended to the Notice from being considered. Second, Opposer asserts that the Board should consider trial testimony from an unrelated trial that was not previously submitted in this case, despite the fact that new evidence is improper in a Request for Reconsideration.

Opposer's Arguments Do Not Address the Deficiencies Stated By the Board In Its Decision

Opposer asserts that since its Notice of Reliance and accompanying registrations were filed during its Rebuttal Testimony Period, they should be considered by the Board. However, this assertion does not cure the multiple deficiencies of the registrations noted by the Board in its decision. The Board stated that the registrations were not entered into the record, not because of the time of filing of the Notice of Reliance, but because the registrations were not "certified copies prepared by the USPTO showing status and title" and the Opposer's answer did not "admit opposer's ownership of the registrations and their continuing validity." *See Gillette Canada Company v. Robin Research Laboratories, Inc.,* Opposition No. 91124984, pg. 4 (TTAB April 12, 2005). It is these uncured failures -- not the timing of the filing of the Notice of Reliance -- that properly caused the registrations to not be entered into the record.

Therefore, Opposer's arguments regarding the time when the Notice of Reliance was filed are misplaced and, even if valid, do not correct the deficiencies required to enter the registrations into the record.

Opposer's Submission of New Evidence is Improper
and Should Not Be Considered

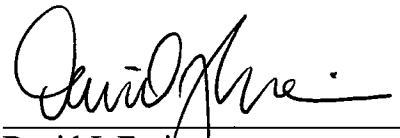
In the Opposer's Motion for Reconsideration of Final Decision, Opposer inappropriately attempts to introduce new evidence in the form of trial testimony from an unrelated proceeding. Opposer attempts to submit this new evidence under a provision noting that such evidence is generally admissible. Whether such evidence would have been considered generally admissible during the discovery and the hearing phase of the trial is irrelevant. This trial testimony was not timely submitted during the discovery and the hearing phase of this case, and as such, it cannot now be introduced or relied upon. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP), § 518 (2004); *Amoco Oil Co. v. Americo, Inc.*, 201 USPQ 126 (TTAB 1978) (stating that new evidence may not be submitted in a request for reconsideration). Instead, requests for reconsideration are to be based upon the evidence properly of record. *See In re Gilster-Mary Lee Corporation,* 2003 TTAB Lexis 476 at *5 (Sept. 16, 2003); *see also In re Thyssen Hunnebeck GmbH*, 2002 TTAB Lexis 179 at *1 (Feb. 21, 2002). Since the trial testimony sought to be introduced by Opposer is not evidence of record, the Board should not consider it.

CONCLUSION

Opposer's arguments upon which it relies in its Motion for Reconsideration are baseless. Instead, Opposer appears to be using its Motion as a mechanism for arguing before the Board that "Applicant has ceased defending its application." *See* Opposer's Mot. for Recons. Of Final Decision, at §§ I and III. Even if such an argument were valid -- which it is not -- it too is not proper grounds for a Request for Reconsideration.

For the reasons discussed above, Applicant respectfully requests that the Board deny the Opposer's Motion for Reconsideration.

Dated: May 17, 2005

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2005, a true and accurate copy of the forgoing **APPLICANT'S MEMORANDUM OF LAW IN OPPOSITION TO OPPOSER'S MOTION FOR RECONSIDERATION OF FINAL DECISION** was served by first-class mail, postage prepaid, upon counsel for Opposer:

Michelle Brownlee, Esq.
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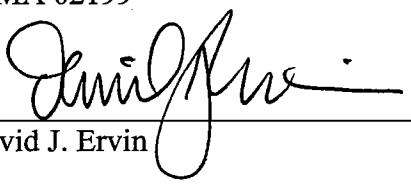
5/17/05
Date


David J. Ervin